

COMPLIANCE BOARD OPINION NO. 01-8
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May 8, 2001

Ms. Carmen Hall Detjen

The Open Meetings Compliance Board has considered your complaint alleging that the Princess Anne Town Commissioners violated the Open Meetings Act by holding an improperly closed meeting on February 26, 2001. For the reasons stated below, the Compliance Board has concluded that the Act was violated.

I

Analysis

According to the minutes for February 26, the President and Town Commissioners held an open session starting at 6:00 p.m. After discussion of a number of items and after a break in the meeting, “the reporter for the Somerset Herald and the member[s] of the public were requested by President Muir to leave the meeting. After they left, Commissioner Frank White moved that the meeting be closed. The motion was seconded ... and it was adopted by a unanimous vote.”

The intended topic of discussion was the proposed purchase of a new town office. Before discussion began on this topic, however, Commissioner Hayward “advised that this subject should be open and he moved to open the meeting” This motion was approved. According to the timely response filed on behalf of the Town Commissioners by Edgar A. Baker, Jr., Esquire, the Commissioners reopened the meeting because they realized that, under the Princess Anne Charter, an open meeting was required.

The Open Meetings Compliance Board has no jurisdiction to construe the Princess Anne Charter and therefore accepts the conclusion that the charter required an open meeting. The Open Meetings Act itself allows for a closed session to “consider the acquisition of real property and matters directly related thereto.” §10-508(a) of the State Government Article. The Act, however, defers to a local law that is “more stringent” by requiring an open meeting even when the Act allows for a closed meeting. §10-504.

In any event, as acknowledged by Mr. Baker, there were irregularities in the procedures followed by the Commissioners. First, the initial closing of the meeting failed to comply with §10-508(d)(2) of the State Government Article, which provides as follows:

Before a public body meets in closed session, the presiding officer shall:

- (i) conduct a recorded vote on the closing of the session; and
- (ii) make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed.

Although a recorded vote was held, the other requirements were not met.

Second, the reopening of the meeting required a good-faith effort to notify the press and public of the changed situation. When members of the public are asked to leave a meeting room so that a closed session can be held, the subsequent session is not effectively reopened to the public unless notice is given that the earlier instruction to leave had been rescinded. The Open Meetings Act is violated if a session is open in name but not in reality. *See Compliance Board Opinions 96-9 (October 15, 1996), reprinted in 1 Official Opinions of the Open Meetings Compliance Board 178, and 96-4 (May 1, 1996), reprinted in 1 Official Opinions of the Open Meetings Compliance Board 162.*

II

Conclusion

The procedural irregularities at the February 26 meeting were, according to Mr. Baker, “an honest misunderstanding” that the Commissioners have acknowledged, and subsequent meetings on the topic of the possible purchase of a new town office have been open. Mr. Baker suggests that, under these circumstances, “further action [by] the Compliance Board is unnecessary.” We have a statutory duty to respond to a complaint, however, and so we must formally record our opinion that the Town Commissioners violated the Act on February 26.

The complaint requested that any vote taken in the closed session on February 26 be invalidated and that sanctions be imposed on the Commissioners. The response of the Commissioners indicates that no decision was made on February

26. More importantly, the Compliance Board has no statutory authority to invalidate a public body's decision, impose sanctions, or take other action beyond the issuance of an opinion.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler G. Webb